International Criminal Court ICC-ASP/1/L.5

Assembly of States Parties

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Draft report

A. Introduction

1. In accordance with its decision at its 3rd meeting, on 9 September 2002,[1] the Assembly of States Parties to the Rome Statute of the International Criminal Court held the first and second resumptions of its first session at United Nations Headquarters from 3 to 7 February and from 21 to 23 April 2003, respectively.

2. Pursuant to General Assembly resolution 57/23 of 19 November 2002 and in accordance with the rules of procedure of the Assembly of States Parties,[2] the Secretary-General of the United Nations invited all States Parties to the Rome Statute to participate in the resumed sessions. Other States which had signed the Statute or the Final Act were also invited to participate in the sessions as observers.

3. Pursuant to the same General Assembly resolution and in accordance with rule 92 of the rules of procedure of the Assembly of States Parties, also invited as observers to the resumed sessions were representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly pursuant to its relevant resolutions[3] as well as representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly of States Parties.

4. Furthermore, in accordance with rule 93 of the rules of procedure, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court or having consultative status with the Economic and Social Council of the United Nations whose activities were relevant to the activities of the Court or that had been invited by the Assembly of States Parties attended and participated in the work of the Assembly of States Parties.

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5. In accordance with rule 94 of the rules of procedure, the following States that had been invited during the first session to be present during the work of the Assembly, excluding those that had become party to the Statute, continued in that capacity at the resumed sessions: Bhutan, Cook Islands, Democratic People's Republic of Korea, Equatorial Guinea, Grenada, Kiribati, Lao People's Democratic Republic, Lebanon, Maldives, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Somalia, Suriname, Swaziland, Tonga, Turkmenistan, Tuvalu and Vanuatu.

6. At its 6th meeting, on 3 February 2003, the Assembly decided to invite the representative of the Special Court for Sierra Leone to participate, as observer, without the right to vote, in its deliberations.

7. The list of delegations to the resumed sessions is contained in documents ICC-ASP/1/INF/1/Add.1 and ICC-ASP/1/INF/1/Add.2, respectively.

8. The resumed sessions were opened by the President of the Assembly of States Parties, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan).

9. The Bureau of the first session, with the exception of Germany, which had relinquished its functions on the Bureau and been replaced by Malta at the 6th meeting of the Assembly, on 3 February 2003, continued in the two resumed sessions, as follows:

President:
H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan)

Vice-Presidents:
Mr. Allieu Ibrahim Kanu (Sierra Leone)
Mr. Felipe Paolillo (Uruguay)

Rapporteur:
Mr. Alexander Marschik (Austria)

Other members of the Bureau:
Austria, Croatia, Cyprus, Democratic Republic of the Congo, Ecuador, Gabon, Malta, Mongolia, Namibia, Netherlands, New Zealand, Nigeria, Norway, Peru, Romania, Serbia and Montenegro,[4] Trinidad and Tobago and United Kingdom of Great Britain and Northern Ireland

10. The Credentials Committee also continued to serve at the resumed sessions, with the following membership: Benin, Fiji, France, Honduras, Ireland, Paraguay, Serbia and Montenegro, Slovenia and Uganda.

11. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Mr. Václav Mikulka, acted as Secretary of the Assembly. The Codification Division provided the substantive servicing for the Assembly.

12. At the 6th meeting, on 3 February 2003, the Assembly adopted the following agenda (ICC-ASP/1/1/Add.1):[5]

1. Adoption of the agenda.
2. Credentials of representatives of States Parties at the first session (resumed).
3. Organization of work.

4. Election of judges.

5. Election of the Prosecutor.

6. Bureau proposal for the meetings of the special working group on the crime of aggression.

7. Bureau report on the appointment of the External Auditor.

8. Recommendations concerning the election of the Registrar.

9. Election of members of the Committee on Budget and Finance.

10. Opening of the nomination period for members of the Board of Directors of the Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and the families of such victims.

11. Other matters.

B. Proceedings of the Assembly during the first and second resumptions of the first session

1. Credentials of representatives of States Parties at the first session (resumed)

13. At its 8th meeting, on 7 February, the Assembly accepted the credentials of the representatives of Colombia, Djibouti, Malawi, Malta, the Republic of Korea, Samoa, Timor-Leste, the United Republic of Tanzania and Zambia, the nine States that had become parties since the first session in September, on the understanding that Colombia, Djibouti, Malawi and Zambia, which had not yet submitted formal credentials, would do so as soon as possible.

14. At its 12th meeting, on 23 April, the Assembly accepted the credentials of the representatives of Barbados and Saint Vincent and the Grenadines, the two States that had become parties since the resumed first session, on the understanding that .... would submit formal credentials as soon as possible.

2. Election of judges

15. At the 6th meeting, on 3 February, the Assembly, on the recommendation of the Bureau, decided that for the purposes of electing judges of the International Criminal Court, any meeting of the Assembly should continue until as many candidates as were required for all seats to be filled had obtained, in one or more ballots, the highest number of votes and a two-thirds majority of the States Parties present and voting. Consequently, all candidates elected as judges should be considered as having been elected at the same meeting irrespective of whether or not the ballot continued for one or more days.

16. At the same meeting, the Bureau reiterated its appeal to States Parties to refrain from entering into reciprocal arrangements for exchange of support in respect of the election. In addition, the Assembly recommended that all candidates should not be present in the conference room at all times that the Assembly was engaged in the process of voting.

17. At its 7th meeting, held from 4 to 7 February, the Assembly proceeded to elect 18 judges of the International Criminal Court in accordance with the relevant

provisions of the Rome Statute as well as resolutions ICC-ASP/1/Res.2 and ICC-ASP/1/Res.3.

18. The following candidates were elected judges of the International Criminal Court:

René Blattmann (Bolivia) (List B, LA/C, M);[6]

Maureen Harding Clark (Ireland) (List A, WEO, F);

Fatoumata Dembélé Diarra (Mali) (List A, AFR, F);

Adrian Fulford (United Kingdom of Great Britain and Northern Ireland) (List A, WEO, M);

Karl Hudson-Phillips (Trinidad and Tobago) (List A, LA/C, M);

Claude Jorda (France) (List A, WEO, M);

Hans-Peter Kaul (Germany) (List B, WEO, M);

Philippe Kirsch (Canada) (List B, WEO, M);

Erkki Kourula (Finland) (List B, WEO, M);

Akua Kuenyehia (Ghana) (List B, AFR, F);

Elizabeth Odio Benito (Costa Rica) (List A, LA/C, F);

Georghios M. Pikis (Cyprus) (List A, ASIA, M);

Navanethem Pillay (South Africa) (List B, AFR, F);

Mauro Politi (Italy) (List B, WEO, M);

Tuiloma Neroni Slade (Samoa) (List A, ASIA, M);

Sang-hyun Song (Republic of Korea) (List A, ASIA, M);

Sylvia Helena de Figueiredo Steiner (Brazil) (List A, LA/C, F);

Anita Ušacka (Latvia) (List B, EE, F).

19. The Assembly conducted 33 ballots. In the first round, 85 ballots were cast, of which 2 were invalid and 83 were valid; the number of States Parties voting was 83; and the required two-thirds majority was 56. The following candidates obtained the highest number of votes and a two-thirds majority of the States Parties present and voting: Clark, Maureen Harding (Ireland) (65); Fatoumata Dembélé Diarra (Mali) (65); Sang-hyun Song (Republic of Korea) (63); Sylvia Helena de Figueiredo Steiner (Brazil) (61); Akua Kuenyehia (Ghana) (60); Elizabeth Odio Benito (Costa Rica) (60); and Navanethem Pillay (South Africa) (56).

20. In the third round, 85 ballots were cast, of which 2 were invalid and 83 were valid; the number of States Parties voting was 83; and the required two-thirds majority was 56. Karl Hudson-Phillips (Trinidad and Tobago) obtained the highest number of votes (56) and a two-thirds majority of the States Parties present and voting.

21. In the fourth round, 85 ballots were cast, of which 2 were invalid and 83 were valid; the number of States Parties voting was 83; and the required two-thirds majority was 56. The following candidates obtained the highest number of votes and

a two-thirds majority of the States Parties present and voting: Georghios M. Pikis (Cyprus) (60); Philippe Kirsch (Canada) (57); and Erkki Kourula (Finland) (56).

22. In the ninth round, 85 ballots were cast, of which none were invalid and 85 were valid; the number of States Parties voting was 85; and the required two-thirds majority was 57. The following candidates obtained the highest number of votes and a two-thirds majority of the States Parties present and voting: Adrian Fulford (United Kingdom of Great Britain and Northern Ireland) (59); Anita Ušacka (Latvia) (59); and Hans-Peter Kaul (Germany) (57).

23. In the thirteenth round, 84 ballots were cast, of which none were invalid and 84 were valid; the number of States Parties voting was 84; and the required two-thirds majority was 56. René Blattmann (Bolivia) obtained the highest number of votes (57) and a two-thirds majority of the States Parties present and voting.

24. In the twenty-first round, 85 ballots were cast, of which none were invalid and 85 were valid; the number of States Parties voting was 85; and the required two-thirds majority was 57. Mauro Politi (Italy) obtained the highest number of votes (58) and a two-thirds majority of the States Parties present and voting.

25. In the twenty-eighth round, 85 ballots were cast, of which none were invalid and 85 were valid; the number of States Parties voting was 85; and the required two-thirds majority was 57. Tuiloma Neroni Slade (Samoa) obtained the highest number of votes (58) and a two-thirds majority of the States Parties present and voting.

26. In the thirty-third round, 84 ballots were cast. There were no invalid ballots, 84 valid ballots, and four abstentions. The number of States Parties voting was 80, and the required two-thirds majority was 54. Claude Jorda (France) obtained the highest number of votes (57) and a two-thirds majority of the States Parties present and voting.

Drawing of lots pursuant to article 36, paragraph 9(b), of the Rome Statute

27. At the 8th meeting, on 7 February, the President, pursuant to paragraph 21 of resolution ICC-ASP/1/Res.2, drew lots to select judges elected who shall serve terms of three and six years, respectively, in accordance with article 36, paragraph 9(b), of the Statute.

(a) Judges elected to serve three years

28. The following judges, listed in alphabetical order, were selected to serve for a term of three years:

Hans-Peter Kaul (Germany); Erkki Kourula (Finland); Akua Kuenyehia (Ghana); Tuiloma Neroni Slade (Samoa); Sang-hyun Song (Republic of Korea); and Anita Ušacka (Latvia)

(b) Judges elected to serve six years

29. The following judges, listed in alphabetical order, were selected to serve for a term of six years:

René Blattmann (Bolivia); Claude Jorda (France); Philippe Kirsch (Canada); Georghios M. Pikis (Cyprus); Navanethem Pillay (South Africa); and Mauro Politi (Italy)

(c) Remaining judges serving nine years

30. The following remaining judges shall serve for a term of nine years:

Maureen Harding Clark (Ireland); Fatoumata Dembélé Diarra (Mali); Adrian Fulford (United Kingdom of Great Britain and Northern Ireland); Karl Hudson-Phillips (Trinidad and Tobago); Elizabeth Odio Benito (Costa Rica); and Sylvia Helena de Figueiredo Steiner (Brazil)

Commencement of terms of office of judges

31. At the 6th meeting, on 3 February, the Assembly, on the recommendation of the Bureau, decided that the terms of office of judges of the International Criminal Court elected by the Assembly shall begin to run as from the 11 March following the date of the election. The Assembly also decided that the term of office of a judge elected to replace a judge whose term of office has not expired shall run from the date of the election for the remainder of that term.

3. Election of the Prosecutor of the International Criminal Court

32. At its 8th meeting, on 7 February, the Assembly, on the recommendation of the Bureau, decided to reopen the nomination period for the Prosecutor of the International Criminal Court and also decided that the period should run from 24 March to 4 April 2003. Since pursuant to resolution ICC-ASP/1/Res.2 every effort shall be made to elect the Prosecutor by consensus, the Bureau, as it had done at the first session, once again encouraged States Parties to consult informally first, before processing their official nominations with the Secretariat. At the close of the nomination period, the nomination of one candidate had been received.

33. At the same meeting, the Assembly took note of the decision of the Bureau, made pursuant to paragraphs 14 and 24 of resolution ICC-ASP/1/Res.2, that the election of the Prosecutor be held during the second resumption of the first session, in April.

34. At its 9th meeting, on 21 April, the Assembly proceeded to elect the Prosecutor of the International Criminal Court and conducted a secret ballot in accordance with the relevant provisions of the Rome Statute notwithstanding the fact that a consensus candidate in accordance with resolution ICC-ASP/1/Res.2 had emerged for the post of Prosecutor following months of consultations.

35. At the same meeting, Mr. Luis Moreno Ocampo (Argentina), having obtained an absolute majority of the members of the Assembly of States Parties, was elected Prosecutor of the International Criminal Court. Seventy-eight ballots were cast, of which none were invalid; 78 were valid; the number of States Parties voting was 78; the required absolute majority was 44; and the number of votes obtained by Mr. Ocampo was 78.

Commencement of the term of office of the Prosecutor

36. At its 9th meeting, on 21 April, the Assembly, on the recommendation of the Bureau, decided that the term of office of the Prosecutor of the International Criminal Court should begin to run from the 16 June following the date of the election.

4. Bureau proposal for the meetings of the special working group on the crime of aggression

37. At its 8th meeting, on 7 February, the Assembly decided, on the basis of the proposal of the Bureau, that the Special Working Group on the Crime of Aggression should meet during annual sessions of the Assembly of States Parties. The first such meeting for 2003 would be held at the second session of the Assembly, in September. Two to three meetings of the Assembly should be allocated to the Special Working Group; and this pattern should be repeated, as necessary, each year.

38. In addition, the Assembly, on the basis of the report of the Bureau, took note of the idea of holding informal inter-sessional meetings of the Special Working Group, but decided that it was not in a position to make any recommendations, since some delegations might find it financially difficult to send representatives to inter-sessional meetings and it would thus be preferable that the Special Working Group meet during the annual sessions of the Assembly of States Parties. The door was left open, however, for any Government wishing to fund the holding of an inter-sessional meeting.

5. Bureau report on the appointment of the External Auditor

39. At its 8th meeting, on 7 February, the Assembly took note of the report of the Bureau that in November 2002 the Office of the Director of Common Services of the International Criminal Court had circulated to missions of States Parties at The Hague and Brussels a request for proposal for the External Auditor, and that in the light of requests of States Parties for more time, the deadline for submission had been extended to 15 February 2003. Accordingly, the Assembly decided that the Bureau should report to the Assembly on further developments concerning the appointment of the External Auditor at the second resumption of the first session, in April 2003. Interested States Parties were also requested to inform their relevant authorities of the extension of the deadline for submission of the proposals.

40. At its 11th meeting, on 22 April, the Assembly was informed that the Bureau, acting under the delegated authority of the Assembly, had appointed the National Audit Office of the United Kingdom of Great Britain and Northern Ireland as auditor for the International Criminal Court[8] for a period of four years.

6. Recommendations concerning the election of the Registrar

41. At the 9th meeting, on 21 April, the Assembly was informed that a list of candidates for the post of Registrar (ICC-ASP/1/11) had been received from the Presidency and it decided, on the recommendation of the Bureau, to proceed on the basis that a working group of the Bureau would consider further and make recommendations concerning the election of the Registrar for consideration by the Assembly. The working group of the Bureau was constituted under the chairmanship of the Vice-President, Ambassador Felipe Paolillo (Uruguay).

42. At its 12th meeting, on 23 April, the Assembly, on the recommendation of the Bureau, adopted recommendation ICC-ASP/1/...

7. Election of members of the Committee on Budget and Finance

43. At its 8th meeting, on 7 February, the Assembly, on the recommendation of the Bureau, decided that the nomination period for candidates for membership of the

Committee on Budget and Finance, which had begun running from 1 December 2002 to 15 February 2003, should be extended to 7 March 2003.

44. Also at the same meeting, the Assembly affirmed the mandate of the President to further extend the nomination period should an insufficient number of candidates be received by the close of the extended deadline. Due to an insufficient number of candidates received at the close of the extended period, the nomination period was further extended by the President to 21 March 2003.

45. At its 10th meeting, on 21 April, the Assembly proceeded to elect the following as members of the Committee on Budget and Finance in accordance with resolution ICC-ASP/1/Res.5:

Mr. Lambert Dah Kindji (Benin)

Mr. David Dutton (Australia)

Mr. Eduardo Gallardo Aparicio (Bolivia)

Mr. Fawzi Gharaibeh (Jordan)

Mr. Myung-jae Hahn (Republic of Korea)

Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)

Mr. John F. S. Muwanga (Uganda)

Mr. Karl Paschke (Germany)

Mr. Michel-Etienne Tilemans (Belgium)

Mr. Santiago Wins Arnábal (Uruguay)

46. In accordance with paragraph 11 of resolution ICC-ASP/1/Res.5, the Assembly dispensed with a secret ballot and elected by consensus the following candidates from Asian States, Latin American and Caribbean States, and Western European and other States: Mr. Fawzi Gharaibeh (Jordan); Mr. Myung-jae Hahn (Republic of Korea); Mr. Eduardo Gallardo Aparicio (Bolivia); Mr. Santiago Wins Arnábal (Uruguay); Mr. David Dutton (Australia); Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland); Mr. Karl Paschke (Germany); and Mr. Michel-Etienne Tilemans (Belgium). The candidates from Latin American and Caribbean States and Western European and other States were also endorsed by their respective groups.

47. In respect of candidates from African States, the Assembly proceeded to conduct a secret ballot. The following candidates, having obtained the highest number of votes and a two-thirds majority of States Parties present and voting, were elected as members of the Committee. Eighty-one ballots were cast, of which none were invalid; 81 were valid; the number of States Parties voting was 81; and the required two-thirds majority was 54.

48. Having received no nomination from Eastern European States, the Assembly, also at the 10th meeting, decided to defer election of candidates from those States until its second session. The Bureau fixed the nomination period for candidates to run from 28 April to 21 August 2003 and the Secretariat was requested to issue an official note inviting nominations.

49. At the same meeting, the Assembly decided that the terms of office of the members should begin to run from 21 April, the date of their election. Since the number of members elected was less than the number of members required under the provisions of resolution ICC-ASP/1/Res.4, the Assembly adopted resolution ICC-ASP/1/9 authorizing the Committee to commence functions as partially constituted.

50. By the terms of the same resolution, the Assembly also decided that the two remaining members from Eastern European States should join the work of the Committee upon their election by the Assembly. It also decided to defer the drawing of lots in accordance with paragraph 13 of resolution ICC-ASP/1/Res.5 until the election of the remaining members.

8. Nomination period for members of the Board of Directors of the Victims Trust Fund

51. At its 11th meeting, on 22 April, the Assembly decided to open the nomination period for members of the Board of Directors of the Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and the families of such victims to run from 28 April to 21 August 2003 and the Secretariat was requested to issue an official note inviting nominations.

9. Other matters

(a) Establishment of an international criminal bar

52. At its 6th meeting, on 3 February, the Assembly was informed that the President, in consultation with the Bureau, had appointed Mr. Hans Bevers (Netherlands) to act as focal point on the establishment of an international criminal bar in order to assist the Assembly in its future discussions on the matter. Mr. Bevers would report to the Bureau developments thereon.

53. At its 11th meeting, on 22 April, the Assembly, on the basis of the report of the Bureau, decided to inscribe on its agenda for the second session an item concerning the establishment of an international criminal bar and to have issued, as an official document, the written report submitted by the focal point to the Bureau.

(b) Status of contributions to the budget of the International Criminal Court for the first financial period

54. At the 8th meeting, on 7 February, the Assembly was apprised of the status of contributions to the budget of the Court for the first financial period and an appeal was made to States Parties which had not yet done so to make their assessed contributions as soon as possible. At the 12th meeting, on 23 April, the President renewed the appeal for contributions.

(c) Draft resolution concerning the recognition of the coordinating and facilitating role of the NGO Coalition for the International Criminal Court

55. At its 11th meeting, on 21 April, the Assembly adopted by consensus a draft resolution contained in document ICC-ASP/1/10 concerning the recognition of the coordinating and facilitating role of the NGO Coalition for the International Criminal Court.

(d) Agreement on the Privileges and Immunities of the International Criminal Court

56. At the 8th meeting, on 7 February, and at the 11th meeting, on 22 April, the President appealed to States that had not yet done so to consider becoming parties to the Agreement on the Immunities and Privileges of the International Criminal Court to facilitate its early entry into force.

(e) Review of the procedure for the election of judges

57. At the 8th meeting, on 7 February, the representative of Honduras drew the attention of the Assembly to paragraph 11 of resolution ICC-ASP/1/Res.3, under which the Assembly is required to review the procedure for the election of judges on the occasion of future elections with a view to making any improvements as may be necessary, and pointed out that in the light of the first election it would be necessary to provide a threshold of at least one third of the votes present and voting for a candidate to continue in any subsequent round.

10. Statements by the President and the Prosecutor of the Court

58. At its 11th meeting, on 21 April, the Assembly heard statements from Judge Philippe Kirsch, President of the Court, and Mr. Luis Moreno Ocampo, the Prosecutor of the Court.

Notes

[1] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part I, para. 39.

[2] Ibid., part II.C.

[3] Resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92, 57/29, 57/30, 57/31, 57/32 and decision 56/475.

[4] On 4 February 2002, the Federal Republic of Yugoslavia officially informed the Secretary-General of the United Nations that it had changed its name to Serbia and Montenegro. At the 7th meeting of the Assembly of States Parties, on the same date, the President of the Assembly announced that arrangements had been made to effect that change in matters concerning sessions of the Assembly.

[5] Items 1 to 7 and 11 were considered during the first resumption (3-7 February 2003) while items 1 to 3, 5 and 7 to 11 were considered during the second resumption (21-23 April 2003).

[6] LA/C = Latin American and Caribbean States.
WEO = Western European and other States.
AFR = African States.
ASIA = Asian States.
EE = Eastern European States.
M = male.
F = female.

[7] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part I, para. 27.

[8] Ibid., para. 29.